IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

WP(C).No. 25540 of 2007(M)

PETITIONER:

DR.G.GOPAKUMAR,M/S.ALAPPAT PHARMACY,
PERYAM,MULAVANA,P.O KOLLAM.

BY ADV. SRI.K.KARTHIKEYA PANICKER
SMT.DAYA K. PANICKER

RESPONDENTS:

THE ASSISTNAT EXCISE COMMISSIONER,
OFFICE OF THE ASSISTANT EXCISE OFFICER,KOLLAM.

BY GOVERNMENT PLEADER SMT. ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.25540 of 2007

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Dated this the 1st day of November, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is engaged in manufacture and sale of Ayurvedic medicines. Ext.P1 is the renewed licence dated 30.1.2006. Ext.P2 is the certificate issued by the Drugs Controller of Kerala of Good Manufacturing Practice. Ext.P3 is produced as the licence issued by the Assistant Excise Commissioner under Rule 83 of the Medicinal and Toilet Preparations (Excise Duties) Rules. Ext.P4 is the SP VI wholesale licence. Ext.P5 purports to be the SP retail licence issued by the Assistant Commissioner. According to him he is manufacturing ayurvedic medicines and marketing the same through his retail outlets and agencies. Petitioner has approached this court to declare that so long as he is manufacturing and marketing ayurvedic medicines under the authority of the licence issued to him, the provisions contained in the Abkari Act or Spirituous Preparations Rules do not confer on the respondent and the excise officers under him either to interfere with the marketing of the medicines or to close down the retail outlets and

agencies under threat and by exerting force. Further prayer sought is to prohibit the respondent and the officers subordinate to him from closing down the petitioner's retail outlets and agencies or interfering in any manner with the smooth functioning of the same. According to the petitioner despite having all these licences, Excise Officers under the respondent are unnecessarily and without any authority of law interfering with the manufacturing and marketing of the Ayurvedic products by forcing him to close down his retail outlets and agencies.

2. A statement is filed inter alia stating as follows:

The petitioner is the holder of SP VI licence for retail licence for the sale of spirituous preparations. He has also got a licence to manufacture Asavas and Arishtas for wholesale. They are issued for the manufacture of Spirituous Preparations and for the sale of same to other holders of lincence in Form No.SP VII for the purpose of retail sale, to medical practitioners etc., as stipulated under condition No.(1) of the SP VI licence. It is their case that he is not entitled to use these licences to sell Arishtas and Asavas through other unlicenced retail outlets. It is stated that no person is entitled to sell medicines

containing alcohol in retail without SP VII licence as stipulated under Rule 11(b) of the Kerala Spirituous Preparations (Control) Rules, 1969. Even though the person is holding an L2 licence, he is not authorised to sell Arishtas and Asavas through the unlincenced retail outlets or to persons who do not possess a valid SP VII licence. The transportation, storing and sale of Arishtas and Asavas without a valid licence issued by the Excise Department is an offence punishable under the Kerala Spirituous Preparations (Control) Rules, 1969.

3. I heard learned counsel for the petitioner Sri. K.Karthikeya Panicker and the learned Government Pleader.

4. Sri.Karthikeya Panicker would point out that though petitioner is having all the licences, he is being forced to close down the shop. According to him the petitioner is acting strictly in accordance with the licence and the petitioner has a right to sell the products to his customers.

5. Learned Government Pleader on the other hand points out that even under Ext.P5 retail licence the petitioner is permitted to sell only through the licensed premises.

I would think that the writ petition can be disposed of as follows:

Apparently petitioner is armed with certain licences as evidenced by Exts.P1, P3, P4 and P5. As long as the petitioner conducts himself within the terms of the licences and the law governing the activities, certainly it will not be open to the respondent to in any way harass the petitioner. But this is not to say that the respondent or the officers under the respondent are precluded from exercising their powers legitimately available to them under law strictly in accordance with law.

(K.M. JOSEPH, JUDGE)

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